IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS. 537, 541 AND 542 OF 2003.

WRIT PETITION NO. 537 OF 2003.

Mr. Rasiklal M. Gangani,
Galaxy Building,
Opposite Hotel Nova Goa,
Panaji. ... Petitioner.

Versus

1. Government of Goa through
   Chief Secretary, Government
   of Goa, Secretariat, Panaji.
2. Director General of Police,
   State of Goa, Secretariat,
   Panaji.
3. Law Secretary, State of Goa,
   Secretariat, Panaji.
4. Superintendent of Police,
   North, Porvorim.
5. Mr. Mahesh Gaokar, Police
   Inspector, Panaji Police
   Station transferred to Vasco
   Police Station, Vasco.
6. Mr. Vaman Tari, Deputy
   Superintendent of Police,
   SDPO, Panaji.
7. Mr. Dilip Shirodkar,
   Near Salgaocar College,
   Miramar.
8. Mr. Brain Rodrigues,
   Vasco. ... Respondents.

Mr. Rohit Bras De Sa, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondents.

WRIT PETITION NO. 541 OF 2003.

Mr. Pramod Bhalchandra Walke,
r/o H. No. 467, Temar Wado,
Assagao. ... Petitioner.

Versus

1. Government of Goa through
   Chief Secretary, Government
   of Goa, Secretariat, Panaji.
2. Director General of Police,
   State of Goa, Secretariat,
   Panaji.

3. Law Secretary, State of Goa,
   Secretariat, Panaji.
4. Under Secretary (Law),
   State of Goa, Secretariat,
   Panaji.
5. Mr. Gundu Naik, Police
   Inspector, Calangute Police
   Station, Calangute.
6. Mr. Umesh Pawaskar, Constable,
   Calangute Police Station,
   Calangute.
7. Mr. Arjun Mazik, Hawaldar,
   Anjuna Police Station,
   Anjuna.
8. Mr. Satyavan Shivram Naik,
   Constable, Anjuna Police
   Station, Anjuna.
9. Mr. Kali Shetgaonkar,
   Driver/Constable, Anjuna
   Police Station, Anjuna.
10. Mr. Pundalik Gavkar,
    Constable, Anjuna Police
    Station, Anjuna.

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Government Advocate for the Respondents.

WRIT PETITION NO. 542 OF 2003.

Mr. Roy Franco,
r/o Umta Wado, Calangute. ... Petitioner.

Versus

1. Government of Goa through
   Chief Secretary, Government
   of Goa, Secretariat, Panaji.
2. Director General of Police,
   State of Goa, Secretariat,
   Panaji.
3. Law Secretary, State of Goa,
   Secretariat, Panaji.
4. Under Secretary (Law),
   State of Goa, Secretariat,
   Panaji.
5. Shri Chandrakant Shambu Naik
   Tuenkar, Head Constable,
   Calangute Police Station,
   Calangute.
6. Shri Shaikh Multani,
   Head Constable,
   Calangute Police Station,
   Calangute.

7. Shri Ramesh Gawas,
   Police Constable,
   Calangute Police Station,
   Calangute.
8. Shri Subhash Goltekar,
   Police Constable,
   Anjuna Police Station,
   Anjuna.
9. Shri Deu Banaulikar,
   Police Inspector,
   Calangute.
10. Shri D.K. Sawant,
    Dy. Superintendent of Police,
    G.R.P. Altinho, Panaji. ... Respondents.

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Additional Government Advocate for the Respondents.

Coram : A.M. KHANWILKAR & P.V. HARDAS, JJ.

Date of reserving the Judgment: 17.12.2003.

Date of pronouncing the Judgment: 29.03.2004.

J U D G M E N T (PER HARDAS, J.)

These Writ Petitions assail the common Judgment passed by the Special Judge, North Goa, Panaji, dated 8th August 2003, dismissing the complaints filed by the petitioners for violation of human rights by the respondents in the respective petitions. These petitions are, therefore, decided by this common Judgment.

2. It appears that the petitioner in Writ Petition No. 537 of 2003 had filed Special Case No. 1 of 2003, petitioner in Writ Petition No. 541 of 2003 had filed Special Case No. 2 of 2002, while petitioner

in Writ Petition No. 542 of 2003 had filed Special Case No. 1 of 2001 and one Mary Rao had filed Special Case No. 1 of 2002. All these cases complained of violation of human rights by the respondents/accused named in the complaint cases respectively. The complainant Mary Rao in Special Case No. 1 of 2002 has not chosen to challenge the common Order passed by the Special Judge, North Goa, Panaji, dismissing the complaint cases as not maintainable.

3. As stated the petitioners/complainants had filed their respective complaint cases in the Court of the Special Judge, North Goa, Panaji, alleging violation of human rights by the respondents/accused named therein. By virtue of Notification, dated 20th June 1995, the Government of Goa with the concurrence of the Chief Justice of the High Court at Bombay, in exercise of the powers conferred by Section 30 of The Protection of Human Rights Act, 1993, specified the District Court of Sessions North Goa and the District Court of Sessions South Goa to be the Human Rights Courts for North Goa District and South Goa District respectively for the purpose of human rights under The Protection of Human Rights Act. By a Notification, dated 27th July 2001, the Government of Goa in exercise of the powers conferred by Section 31 of The Protection of Human Rights Act, 1993, specified two Public Prosecutors as

Special Public Prosecutors for the purpose of conducting cases in the Human Rights Courts for the North Goa District and South Goa District respectively.

4. It appears that on the basis of some preliminary objections, the learned Special Judge, North Goa, Panaji, considered three points as arising for his determination in the four complaint cases pending on his file. The said three common questions, which arose in the four complainant cases, which have been referred to by the learned Special Judge in paragraph 2 of the Judgment, are reproduced hereunder:-

> "1. Whether the complaints/proceedings instituted by the respective complainants are maintainable?
>
> 2. Whether the Special Public Prosecutor appointed by the Government can conduct the cases when the complaints are filed by private complainants?
>
> 3. Whether the Special Public Prosecutor appointed by the Government can defend the respondents who are functionaries of the State machinery?"

5. In respect of the first point which arose for consideration, the learned Special Judge, in paragraph 7 of the Judgment, by referring to Section 30 of The Protection of Human Rights Act, (hereinafter referred to as 'The Human Rights Act' for the sake of brevity), came to the conclusion that the purpose of establishing a

Human Rights Court was to try the offence arising out of violation of human rights. The learned Special Judge further observed that 'inquiry into the complaints' and 'trial of offence' were two different things and trial of offence presupposes disclosure of offence. According to the learned Special Judge, unless an offence is disclosed by a fact finding machinery, the trial of offence would not arise and the learned Special Judge, therefore, opined that it was not the function of the Human Rights Court to embark upon the inquiry into the complaints arising out of violation of human rights as the function of inquiring into the complaints arising out of violation of human rights must necessarily be performed by Human Rights Commission constituted under the Act. The learned Special Judge, in paragraph 10, therefore, concluded that an inquiry into the complaints by the Commission is mandatory before a criminal prosecution is launched against the persons who are alleged to have violated the human rights. The learned Special Judge further held that it was for the Government to file a prosecution against the concerned persons and the Human Rights Court could 'assume' jurisdiction only after the prosecution was launched by the Government on the basis of the fact finding report of the Commission and, therefore, it was not open for any private individual to directly approach the Human Rights Court without first approaching the Human Rights

Commission. The learned Special Judge, therefore, held, in respect of the first point which arose for his consideration, that the complaints/proceedings instituted by the complainants were not maintainable.

6. In respect of the second point which arose for his consideration, the learned Special Judge in paragraph 12 of the Judgment observed that since he had already held that a private complainant could not directly approach the Human Rights Court without first approaching the Human Rights Commission, the question whether the Special Public Prosecutor could conduct the case when the complaint was filed by a private complainant did not arise for consideration.

7. In respect of the third point which arose for his consideration, the learned Special Judge in paragraph 13 of the Judgment held that a Public Prosecutor could not be allowed to defend the respondents/accused before the Human Rights Court.

8. The three complainants in Special Case Nos. 1 of 2001, 2 of 2002 and 1 of 2003, by these petitions, have assailed the Judgment of the learned Special Judge, dated 8th August 2003, dismissing their complaints as not maintainable. Notices were issued to the respondents and by an amendment to the petitions, the

accused/violators of human rights were also joined as respondents to the petitions. After service, some of the respondents/accused were present at the time of hearing of these petitions. They declined to engage an advocate and also declined to argue in person when the opportunity was extended to them. We have heard the learned counsel for the petitioners and the learned Advocate General on behalf of the respondents.

9. Mr. Rohit Bras De Sa and Mr. Arun Bras De Sa, the learned counsel appearing for the petitioners, have submitted before us that the purpose of constitution of the Human Rights Commission and the purpose of constitution of the Human Rights Court under the Human Rights Act are entirely different. The jurisdiction of the Human Rights Commission and the Human Rights Court under the Human Rights Act do not overlap. The scheme of the Human Rights Act does not contemplate that the Human Rights Court cannot take cognizance of the offence of violation of human rights unless and until the Human Rights Commission is first approached and the Human Rights Commission conducts an inquiry and records some findings. Therefore, according to the learned counsel for the petitioners, the Judgment of the learned Special Judge is wholly unsustainable. The learned counsel for the petitioners place reliance on the Judgment of the Apex Court in **A.R. Antulay v.**

**Ramdas Sriniwas Nayak and another,** (1984) 2 S.C.C. 500. Paragraph 6 of which reads as under:-

> "It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision."

10. The learned Advocate General appearing on behalf of the respondents has also not supported the Judgment of the learned Special Judge. According to the learned Advocate General, the Human Rights Act does not specify any separate procedure for trial of offences under the Human Rights Act and, therefore, the provisions of the Code of Criminal Procedure would be applicable for the trial of offences under the Human Rights Act. The learned Advocate General has relied on the decision of the Division Bench of the Andhra Pradesh High Court in **A. Goverdhan Reddy v. Superintendent of Police Allahabad and others,** 1998 Cri.L.J. 561.

11. In order to appreciate and understand the respective contentions of the learned counsel for the parties, it is necessary to make a reference to certain provisions of the Human Rights Act.

12. Section 2(d) of the Human Rights Act defines 'human rights' to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India. Section 2(e) defines 'Human Rights Court' to mean the Human Rights Court specified under Section 30. Section 30 of the Human Rights Act states that for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences. Accordingly, the State Government by issuance of the Notification, dated 20th June 1995, had specified the Court of Sessions North Goa and the Court of Sessions South Goa to be the Human Rights Courts for North Goa and South Goa respectively.

13. Section 3 in Chapter II of Human Rights Act deals with the constitution of a body to be known as the National Human Rights Commission. Section 3 further

deals with the constitution of the panel for the National Human Rights Commission. Section 10 states that the Commission shall meet at such time and place as the Chairperson may think fit and Sub-Section (2) provides that the Commission shall regulate its own procedure.

14. Section 12 in Chapter III deals with the functions and powers of the Commission. Section 12 reads as under:-

> **"12. Functions of the Commission.--** The Commission shall perform all or any of the following functions, namely:--
>
> (a) inquire, suo-motu or on a petition presented to it by a victim or any person on his behalf, into complaint of --
>
> (i) violation of human rights or abetment thereof; or
>
> (ii) negligence in the prevention of such violation, by a public servant;
>
> (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
>
> (c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
>
> (d) review the safeguards provided by

> or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
>
> (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
>
> (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
>
> (g) undertake and promote research in the field of human rights;
>
> (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
>
> (i) encourage the efforts of non-governmental organisation and institutions working in the field of human rights;
>
> (j) such other functions as it may consider necessary for the promotion of human rights."

15. Section 13 of the Human Rights Act confers on the Commission, when inquiring into complaints under the Act, all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908, and in particular confers the power on the Commission of summoning and enforcing the attendance of witnesses and examining them on oath, discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or office,

issuing commissions for the examination of witnesses or documents and any other matter which may be prescribed.

16. Section 14 of the Human Rights Act empowers the Commission for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government. Sub-Section (2) of Section 14 empowers the officer or agency whose services are utilized by the Commission for the purpose of investigating into any matter pertaining to the inquiry to summon and enforce the attendance of any person and examine him, require the discovery and production of any document and requisition any public record or copy thereof from any office and then to submit a report to the Commission within such period as may be specified by the Commission.

17. Section 17 of the Human Rights Act deals with the procedure of the Commission while inquiring into the complaints of violation of human rights.

18. Section 18 of the Human Rights Act deals with the steps which the Commission may take upon completion of an inquiry held under the Act. According to

Sub-Section (1) of Section 18, the Commission may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons. Under Sub-Section (2) of Section 18 approach the Supreme Court or the High Court concerned for such directions, orders or writs as the Court may deem necessary. Under Sub-Section (3) the Commission may recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the member of his family as it may consider necessary.

19. Section 21 in Chapter V of the Human Rights Act refers to the establishment of the State Human Rights Commission. As per Section 29 of the Human Rights Act the provisions of Sections 9, 10, 12 to 18 shall apply to the State Commission with certain modifications.

20. A perusal of the above provisions would clearly indicate that the powers, duties and functions of the Commission under the Human Rights Act do not overlap with the functions, powers of the Human Rights Court. The provisions of the Human Rights Act do not mandate that a prosecution cannot be launched unless and until the complaint has been first inquired into or

investigated by the Commission. The provisions of the Act certainly empower the Commission to recommend to the Government the prosecution of the erring officers but that does not mean that a prosecution can only be launched if the Commission recommends the institution of the prosecution. In fact Section 12(b) permits the Commission to intervene in any proceeding involving violation of human rights, no doubt, with the permission of the Court. That would be a strong indicator that the trial of the case involving violation of human rights and a complaint alleging violation of human rights before the Commission are independent of each other. By this Act two different forums are created. One forum, namely, the Commission to inquire and investigate into the complaints involving violation of human rights and to suggest either remedial measures or the prosecution of the violators. The second forum, namely, the Human Rights Court to try the complaints involving violation of human rights. The trial before the Human Rights Court is not dependent upon any inquiry or investigation done by the Commission. Trial of an offence by the Human Rights Court is different from the inquiry and investigation by the Commission. Filing of complaint cases is not something unknown to the procedure in the Code of Criminal Procedure. Private complaint cases can be filed for offences exclusively triable by a Court of Sessions. The Human Rights Court has to try the cases

as per law and is not called upon by the Code of Criminal Procedure or the Human Rights Act to hold any inquiry. The role of the human rights Commission is more recommendatory in nature while the role of the Court under the Human Rights Act is to try the offenders and punish them according to law. The jurisdiction and function of the Human Rights Court and the Human Rights Commission being entirely different, there was no basis for the Special Judge to arrive at the conclusion that unless and until a complaint has been inquired into by the Commission, the prosecution cannot be launched. We, therefore, see considerable force in the submission of the learned counsel for the parties that the learned Special Judge was in error in holding that before the Special Judge tries an offence a complaint has to be first inquired into by the Human Rights Commission. To recommend the institution of the prosecution is a power conferred on the Commission which is independent of the power and jurisdiction of the Human Rights Court to try the violators of human rights. The provisions in Chapter II, III, IV and V relating to the establishment of the Human Rights Commission, its functions and its powers are distinct and separate than the provisions applicable to the Human Rights Court. The powers of the Human Rights Court in the trial of cases involving violation of human rights is neither fettered nor circumscribed by the powers of the Commission to inquire

into complaints of violation of human rights. A perusal of the Human Rights Act does not even remotely suggest that a private complainant cannot put the criminal law in motion in respect of violation of human rights by filing a complaint. In the absence of any such restriction restricting the Special Judge from taking cognizance of the offence of violation of human rights on the basis of a private complaint, the learned Special Judge, according to us, was in error in holding that the complaints were not maintainable.

21. A question naturally arises whether the Court of Session, which is specified as the Special Court under the Human Rights Act, can take cognizance of the offence as a Court of original jurisdiction. Since the Human Rights Act has not specified any special provision relating to the cognizance and the trial of the offence, the provisions of the Code of Criminal Procedure would govern the trial of cases before the Human Rights Court. The Sessions Court though designated as a Human Rights Court continues to be a Court of Session and, therefore, unless it is otherwise stated in the Act, the Human Rights Court would not be a Court of original jurisdiction. It, therefore, cannot directly take cognizance of a complaint filed before it. A reference may usefully be made to Section 193 of the Code of Criminal Procedure, which provides that except as

otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code. As stated by us earlier, there is no provision in the Human Rights Act to hold that the Special Judge designated under the Human Rights Act is a Court of original jurisdiction. Therefore, the Human Rights Court can only take cognizance of the complaints which are committed to it for trial by the Magistrate as per Section 209 of the Code of Criminal Procedure. Appropriately, on a charge-sheet being filed, the Special Judge can proceed with the trial after the same is committed to it for trial under Section 209 of the Code of Criminal Procedure. The procedure for the trial before the Special Judge would be the procedure set out in Sections 225 onwards in Chapter XVIII of the Code of Criminal Procedure. Since the mandate of the law is that the trial before the Court of Sessions should be conducted by the Public Prosecutor, the Special Public Prosecutor, so designated under Section 31 of the Human Rights Act, can alone conduct the prosecution before the Special Judge.

22. The Andhra Pradesh High Court in A. Goverdhan Reddy v. Superintendent of Police Allahabad and others

(Supra) has taken a similar view and in paragraph 8 has observed as under:-

> "8. It is not necessary to refer to other provisions of the Code as the above leave no manner of doubt that the Human Rights Court, being a Court of Session for trial of offences violative of Human Rights, does not have the power to take cognizance of any offence as a Court of original jurisdiction unless the case is committed to it by a Magistrate. A Magistrate of the first class or a Magistrate of the second class, as the case may be, when empowered in this behalf, can take cognizance of any offence upon receiving a complaint of facts, upon a police report or upon information received from any person other than a police officer or upon his own knowledge. Court of Session, however, cannot do so and accordingly Human Rights Court also cannot take cognizance of the offence as the Court of the first instance. There is, thus, an error in the impugned judgment in thinking that petitioner-appellant has the remedy in the Human Rights Court."

23. Therefore, in our considered opinion, the Judgment of the learned Special Judge in respect of the findings regarding the first point which arose for his consideration deserves to be quashed and set aside. According to us, a private complaint by a party, who has not approached either the National Commission or the State Human Rights Commission, is maintainable and the Human Rights Court has the jurisdiction to try the complaints/cases committed to it under the provisions of law.

24. The Judgment impugned in the present petitions does not indicate that the private complaints filed by the petitioner had been filed before the Magistrate who had then committed it to the Court of the Special Judge for trial. We, therefore, direct the learned Special Judge, if the complaints have not been committed to him by the Magistrate for trial, to remit the complaints to the concerned Magistrate for committing them to the Special Judge for trial in accordance with the provisions of the Code of Criminal Procedure. After committal of the private complaint cases, the learned Special Judge shall expeditiously decide the same in accordance with law.

25. We, therefore, allow the petitions and quash and set aside the Judgment of the learned Special Judge dismissing the complaints as not maintainable and direct the Special Judge to remit the complaints of the petitioners to the concerned Magistrate for committing them to the Court of the Special Judge for trial in accordance with law. Rule made absolute on the above terms with no order as to costs.

(A.M. KHANWILKAR)
JUDGE.

(P.V. HARDAS)
JUDGE.

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